

Patent

Attorney Docket No.: 12988/19

U.S. Serial No.: 09/575,088

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No. : 09/575,088 Confirmation No. 9765  
Applicant : Daniel J. GUINAN  
Filed : May 19, 2000  
Title : MULTI-PARTY ELECTRONIC TRANSACTIONS  
TC/A.U. : 3691  
Examiner : Thu Thao HAVAN

**APPEAL BRIEF**

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This brief is in furtherance of the Notice of Appeal, filed in this case on September 6, 2006, and to the Notice of Panel Decision from Pre-Appeal Brief Review dated November 14, 2006.

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**I. REAL PARTY IN INTEREST**

The real party in interest in this matter is eBay Corporation.

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**II. RELATED APPEALS AND INTERFERENCES**

There are neither related appeals nor related interferences affecting this application.

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**III. STATUS OF CLAIMS**

Claims 44-61 are all the claims pending in this application.

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**IV. STATUS OF AMENDMENTS**

The listing of claims in the Claims Appendix of this Appeal Brief reflects the present status of the claims.

Appellants have not amended the claims pursuant to the final rejection.

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### V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a method, a computer-readable medium including instructions for performing the method, and a system for effecting multi-party electronic commerce involving multiple levels of offers of goods and/or services. Looking at Figure 1, described on page 14 of the specification, offers 102, 104, and 106 are for various rollerblade equipment. These correspond to the claimed "first-level offer," and also to the claimed "atomic offer," and are exemplary and non-limiting.

Offer 112 is an offer for a package comprising the goods available via offers 102, 104, 106. Offer 112, a package offer, corresponds to the claimed "second-level offer," which again is exemplary and non-limiting. As described in the application, a broker might combine offers 102, 104, and 106, thereby adding value to the overall package, and might charge a fee over and above the individual prices of the goods in offers 102-106. Offers 102 and 104, or 104 and 106, or 102 and 106, likewise could be combined, for example, into other kinds of second level or package offers.

Offer 108 is an offer for a rollerblade lesson -- a service. This is also a "first level offer" or an "atomic offer" in the language of the claims. In the embodiment of Figure 1, service offer 108 is combined with package offer 112 to form a further package offer 114 which comprises the rollerblade goods of offers 102, 104, and 106, and also the rollerblade service of offer 108. Another way of looking at package offer 114 is with package offer 112 as a single good, for example, from a broker who has combined the offers 102, 104 and 106 into the package, and

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offer 108, where now offer 112 would be viewed as a first level or atomic offer, as would offer 108, and offer 114 would be a second-level offer.

In any event, all of offers 102, 104, 106, and 108 are for different respective goods or services.

Figure 2 shows the same things as Figure 1, but adds a zero-sum offer 200 for the overall rollerblade package, which comprises rollerblade gear and a rollerblade lesson. Figure 3 shows a Venn diagram of the hierarchy shown in Figure 2. Figures 2 and 3 are described on pages 19 and 20 of the specification. A zero-sum offer is counter offer from a customer, matching one of the hierarchical offers just described.

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**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 44-61 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Pallakoff et al. (USP 6,269,343).



**VII. ARGUMENT**

**A. The Prior Art – Pallakoff – Describes Only A Single Good – A Soccer Ball**

Pallakoff describes an online marketing system which provides, among other things, various levels of pricing for a particular good -- in the described embodiment, the good is a soccer ball. The larger the number of soccer balls purchased, the lower the price. Col. 4, lines 24-29; col. 8, lines 5-7; col. 8, lines 33-40. In order to get lower prices for soccer balls, buyers may choose to aggregate their respective demands to create a single, larger offer representing a higher volume. Col. 10, lines 43-50. The idea is to be able to aggregate demand in situations where higher volumes trigger lower unit prices. Col. 1, lines 53-68.

Pallakoff teaches demand aggregation for a single good. There is no disclosure or suggestion of multiple goods being at play, unlike the claimed invention, which requires at least two atomic goods or services that are different from each other.

**B. Pallakoff Does Not Describe A Service of Any Kind**

Pallakoff's notion of aggregated demand pertains to volume purchases of goods. Services are not in play at all. While the Examiner has viewed the price of a soccer ball as a "service," this is neither the conventional meaning of the term, nor the meaning used in the present application. In any event, one cannot aggregate a good and a price to come up with a hierarchical offer, as claimed in the present application. In the present application, and indeed in accordance with ordinary meaning, an offer to sell good necessarily means that the good is being offered at a price. An offer to sell a service inherently means that the service is being offered at a price. The ordinarily skilled artisan simply would not view a price as a service, as the

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Examiner apparently has done, and separate the price from the good. An offer is something at a price; it is not merely the thing (good or service) being sold.

In the final rejection, the Examiner identified the unit price of soccer balls in Pallakoff as being a "service"; noted different unit prices based on different quantities of the same good (soccer balls); and concluded that Pallakoff teaches two different levels of service, thereby meeting the language of the claims. Appellant submits that, as described in the preceding sections, the Examiner's interpretation of "good" and "service" falls outside of customary meaning and the meaning used in the present application.

The Examiner would have to define "service" as being the price of a "good". There simply is no other "service" that Pallakoff describes. According to the Examiner, then, a "good" is a soccer ball and a "service" is the price of a soccer ball. Thus, according to the Examiner's reading of the claims of the present application, someone offering "a good or service" could offer either a soccer ball (a good) or a price of a soccer ball (a service).

The Examiner's reading completely eviscerates the use of the terms "offer," "good," and "service" in their ordinary, customary meanings. Therefore, the Examiner's reading must be improper.

Appellant submits that it makes no sense to offer, as a service, just a price of a good. One could offer a good at a price. That is the customer meaning of "offer" in the contractual sense, which is how the term clearly is being used in the present application. However, in the Examiner's reading of Pallakoff, that would be the same as offering a good and a service, not a good or service. Moreover, one would not simply offer a good without specifying a quantity and a price. Again, that would be the very meaning of "offer". Thus, in Pallakoff, one would not

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simply offer a soccer ball: one might offer a soccer ball at \$15 each or \$10 each, depending on quantity (Pallakoff, col. 8, lines 33-40). But it still would be the good that would be offered.

The price would be part of the offer. The price would not be a separate service.

Pallakoff's goal is to aggregate demand so as to obtain lower unit pricing. Pricing is thus intrinsically bound up with quantity. The two are not separated in any way. To do so would frustrate Pallakoff's purpose. Buyers are supposed to be putting their offers together for a single good to obtain a lower unit price for that good for all of the buyers in the group. Treating the various unit prices as different "services" would frustrate the purpose of Pallakoff. This result clearly is improper. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

### **C. Pallakoff Does Not Describe A Hierarchical Offer of Any Kind**

Pallakoff only describes soccer balls as goods being sold. Not other soccer equipment; not even other colors, shapes, or sizes of soccer balls; just a single type of soccer ball. Pallakoff does not describe any service being offered, as Appellant has explained. Because the claims require that there be at least two different goods and/or services being offered as atomic offers, Pallakoff does not even meet this criterion.

### **D. The Claimed Invention Requires a Plurality of Hierarchical Offers**

The relevant language from each of the independent claims of the present application is the creation of a plurality of hierarchical offers, and the "wherein" clause in each independent claim, as follows:

... a plurality of hierarchical offers based on the plurality of atomic offers,

the plurality of hierarchical offers including:

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at least one first-level offer including at least a first one of  
the plurality of atomic offers, and

at least one second-level offer including the first-level  
offer and at least a second one of the plurality of atomic offers not  
included within the first-level offer;

\* \* \*

wherein the first one of the plurality of atomic offers is an atomic offer for  
a first good or service, and the second one of the plurality of atomic offers is an  
atomic offer for a second good or service different from the first good or  
service.

**E. The Invention Requires That The Second Level Offer Include The First**  
**Level Offer; Pallakoff Clearly Does Not**

In Pallakoff, when a seller offers 250-499 soccer balls at \$15 each and 500-700 soccer balls at \$10 each, a buyer purchasing 499 balls would pay \$15 per ball, and a buyer purchasing 500 balls would pay \$10 per ball. *See* Pallakoff, col. 8, lines 33-40. Thus, a group purchasing 500 balls pays \$5,000 ( $500 \times \$10$ ). There is only a single offer The group does not pay \$7,495 ( $(499 \times \$15) + (1 \times \$10)$ ), which would have to be the case for there to be two offers. That is the whole idea of aggregation. However, the claims recite that the second level offer includes the first level offer. The second level offer in Pallakoff - assuming *arguendo* that that is what the lower unit price represents - does not include the first level offer, because the price of the second level offer is different from the price of the first level offer.

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Pursuant to the foregoing discussion, Applicant respectfully submits that claims 44-61 are patentable over Pallakoff.

The Examiner is hereby authorized to charge the appeal brief fee of **\$500.00** and any additional fees which may be necessary for consideration of this paper to Kenyon & Kenyon LLP Deposit Account No. **11-0600**.

Respectfully submitted,

KENYON & KENYON LLP

Date: December 14, 2006

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## CLAIMS APPENDIX

44. A method for transacting multi-party electronic commerce over a network, comprising:  
creating a plurality of atomic offers associated with a plurality of suppliers;  
creating a plurality of hierarchical offers based on the plurality of atomic offers, the  
plurality of hierarchical offers including:

- at least one first-level offer including at least a first one of the plurality of atomic offers, and

- at least one second-level offer including the first-level offer and at least a second one of the plurality of atomic offers not included within the first-level offer;

- creating at least one counter offer associated with a consumer;

- storing the plurality of atomic offers, the plurality of hierarchical offers and the counter offer in a memory;

- matching the counter offer to one of the plurality of hierarchical offers to create a zero-sum offer; and

- closing the zero-sum offer,

- wherein the first one of the plurality of atomic offers is an atomic offer for a first good or service, and the second one of the plurality of atomic offers is an atomic offer for a second good or service different from the first good or service.

45. The method of claim 44, wherein:

- each of the plurality of atomic offers include an atomic offer description and an atomic offer price;

- each first-level offer includes:

a first-level fee,  
a first-level description based on each of the included atomic offer descriptions,  
and  
a first-level price based on the first-level fee and each of the included atomic offer prices;

each second-level offer includes:

a second-level fee,  
a second-level description based on the first-level description and each of the included atomic offer descriptions, and  
a second-level price based on the second-level fee, the first-level price, and each of the included atomic offer prices;

the counter offer includes a counter offer description and a counter offer price; and  
said matching the counter offer includes comparing the counter offer description and price to each first-level and second-level description and price, respectively, to determine a match.

46. The method of claim 44, wherein the zero-sum offer includes an atomic offer corresponding to each of the atomic offers included within the first-level and second-level offers.

47. The method of claim 46, further comprising:

determining whether each atomic offer included within the zero-sum offer is expired, invalid or unavailable; and

if so determined, not closing the zero-sum offer.

48. The method of claim 46, wherein said closing the zero-sum offer includes closing each atomic offer included within corresponding first-level and second-level offers.

49. The method of claim 47, wherein said closing each atomic offer includes:  
sending a payment based on the atomic offer price from the consumer to the supplier associated with the atomic offer; and  
at least one of:

- shipping a product associated with the atomic offer to the consumer, and
- providing a service associated with the atomic offer to the consumer.

50. A computer readable medium including instructions adapted to be executed by a processor to perform a method for transacting multi-party electronic commerce over a network, the method comprising:

- creating a plurality of atomic offers associated with a plurality of suppliers;

- creating a plurality of hierarchical offers based on the plurality of atomic offers, the plurality of hierarchical offers including:

- at least one first-level offer including at least a first one of the plurality of atomic offers, and

- at least one second-level offer including the first-level offer and at least a second one of the plurality of atomic offers not included within the first-level offer;

- creating at least one counter offer associated with a consumer;

- storing the plurality of atomic offers, the plurality of hierarchical offers and the counter offer in a memory;



matching the counter offer to one of the plurality of hierarchical offers to create a zero-sum offer; and

closing the zero-sum offer,

wherein the first one of the plurality of atomic offers is an atomic offer for a first good or service, and the second one of the plurality of atomic offers is an atomic offer for a second good or service different from the first good or service.

51. The computer readable medium of claim 50, wherein:

each of the plurality of atomic offers include an atomic offer description and an atomic offer price;

each first-level offer includes:

a first-level fee,

a first-level description based on each of the included atomic offer descriptions,

and

a first-level price based on the first-level fee and each of the included atomic offer prices;

each second-level offer includes:

a second-level fee,

a second-level description based on the first-level description and each of the included atomic offer descriptions, and

a second-level price based on the second-level fee, the first-level price, and each of the included atomic offer prices;

the counter offer includes a counter offer description and a counter offer price; and

said matching the counter offer includes comparing the counter offer description and price to each first-level and second-level description and price, respectively, to determine a match.

52. The computer readable medium of claim 50, wherein the zero-sum offer includes an atomic offer corresponding to each of the atomic offers included within the first-level and second-level offers.

53. The computer readable medium of claim 51, further comprising:  
determining whether each atomic offer included within the zero-sum offer is expired, invalid or unavailable; and  
if so determined, not closing the zero-sum offer.

54. The computer readable medium of claim 51, wherein said closing the zero-sum offer includes closing each atomic offer included within corresponding first-level and second-level offers.

55. The computer readable medium of claim 53, wherein said closing each atomic offer includes:

sending a payment based on the atomic offer price from the consumer to the supplier associated with the atomic offer; and  
at least one of:

shipping a product associated with the atomic offer to the consumer, and  
providing a service associated with the atomic offer to the consumer.

56. A system for transacting multi-party electronic commerce over a network, comprising:

an offer processing server, having a memory and coupled to a network, adapted to:  
create a plurality of atomic offers associated with a plurality of suppliers,  
create a plurality of hierarchical offers based on the plurality of atomic offers, the  
plurality of hierarchical offers including:

at least one first-level offer including at least a first one of the plurality of atomic offers,  
and

at least one second-level offer including the first-level offer and at least a second one of  
the plurality of atomic offers not included within the first-level offer,

create at least one counter offer associated with a consumer,  
store the plurality of atomic offers, the plurality of hierarchical offers and the counter  
offer in the memory,

match the counter offer to one of the plurality of hierarchical offers to create a zero-sum  
offer, and

close the zero-sum offer;

wherein the first one of the plurality of atomic offers is an atomic offer for a first good or  
service, and the second one of the plurality of atomic offers is an atomic offer for a second good  
or service different from the first good or service;

a payment server, coupled to the network, to exchange payments between the consumer  
and the plurality of suppliers; and

a fulfilment server, coupled to the network, to exchange messages associated with the  
zero-sum offer between the consumer and the plurality of suppliers.

57. The system of claim 56, wherein:

each of the plurality of atomic offers include an atomic offer description and an atomic offer price;

each first-level offer includes:

a first-level fee,

a first-level description based on each of the included atomic offer descriptions,

and

a first-level price based on the first-level fee and each of the included atomic offer prices;

each second-level offer includes:

a second-level fee,

a second-level description based on the first-level description and each of the included atomic offer descriptions, and

a second-level price based on the second-level fee, the first-level price, and each of the included atomic offer prices;

the counter offer includes a counter offer description and a counter offer price; and

said match the counter offer includes to compare the counter offer description and price to each first-level and second-level description and price, respectively, to determine a match.

58. The system of claim 56, wherein the zero-sum offer includes an atomic offer corresponding to each of the atomic offers included within the first-level and second-level offers.

59. The system of claim 57, wherein the offer processing server is further adapted to:  
determine whether each atomic offer included within the zero-sum offer is expired, invalid or unavailable; and

if so determined, not close the zero-sum offer.

60. The system of claim 57, wherein said close the zero-sum offer includes to close each atomic offer included within corresponding first-level and second-level offers.

61. The system of claim 59, wherein said close each atomic offer includes to:  
send a payment based on the atomic offer price from the consumer to the supplier  
associated with the atomic offer; and  
at least one of:

ship a product associated with the atomic offer to the consumer, and  
provide a service associated with the atomic offer to the consumer.

## EVIDENCE APPENDIX

No evidence is being entered or relied upon in this Appeal, beyond the correspondence of record.

## RELATED PROCEEDINGS APPENDIX

There are no related proceedings.